TESTIMONY OF

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before the

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON TECHNOLOGY AND PROCUREMENT POLICY

regarding H.R. 3832
THE SERVICE ACQUISITION REFORM ACT OF 2002 (SARA)

March 7, 2002

INTRODUCTION AND OVERVIEW

Chairman Davis and members of the Committee, I appreciate the opportunity to appear before you today to discuss H.R. 3832, the Service Acquisition Reform Act of 2002 (SARA). As your invitation letter highlighted, the federal procurement system experienced dramatic change during the 1990's. While I applaud the intent behind many of these acquisition reforms, significant concerns regarding the implementation of these reforms merit this Committee's attention and effort. This Committee is uniquely well positioned to further acquisition reform by neutralizing a number of arguably unanticipated, but nonetheless problematic, results of the 1990's reforms. Against this backdrop, I will address four key topics.

First, I encourage this Committee to seize this opportunity to restore meaningful oversight within our procurement system. Second, I encourage you to utilize this legislative initiative to invest in, and revitalize, the acquisition workforce, a necessary first step towards sustaining public trust and confidence in federal procurement. Third, I hope to draw the Committee's attention to one potentially unnoticed, but hugely problematic provision in the bill. Specifically, I recommend that section 221, the proposal authorizing a ten-fold increase in the purchase card threshold, be dropped. Fourth, I suggest caution and further study on the provisions related to commercial purchasing.

THE ACQUISITION REFORM CONTEXT: SYSTEMIC CHANGES; INADEQUATE OVERSIGHT

The 1990's acquisition reform movement dramatically increased individual buyers' discretion and flexibility. In so doing, it prompted significant changes in the way the government buys. Arguably, the 1990's reforms altered the system more dramatically than, in 1984, when the procurement community confronted not only the Competition in Contracting Act (CICA), but also the formal introduction of the Federal Acquisition Regulation (FAR). It should come as no

surprise to this Committee that change, however positive, is hugely disruptive.[1] As discussed below, however, despite the scope of these reforms, the government failed to prepare its acquisition workforce for, or support it through, the transition to the reformed regime. The procurement process and the acquisition workforce – those individuals upon whom the system depends – have not yet recovered from this tsunami of change.

During this shift towards more a business-like model, the uniform procurement system envisioned in 1984 (yet never fully realized) has slowly but inexorably become balkanized. The proliferation of purchase cards usage, in conjunction with the micro-purchase threshold has exempted high-volume, low-dollar purchasing from conventional constraints and controls. Through creation of the "other transactions authority," Congress suggests that certain sophisticated exchanges of promises between the government and its contractors are not procurement contracts. Inter-agency multiple award contractual vehicles permit program managers to by-pass their agencies' contracting officers in favor of more pliable buyers in other agencies.[2] Unfortunately, these buyers' responsiveness is driven by their dependence upon a transaction fee and appears unfettered by traditional public procurement norms such as transparency, competition, and integrity. Individual government instrumentalities, such as the Federal Aviation Administration, simply have been removed from the uniform procurement system. This reduced uniformity imposes significant transaction costs on both the government and the private sector. Balkanization reduces the government's ability to efficiently train, assign, and promote its personnel. As discussed below, in the current environment, the government simply cannot afford this type of inefficiency with regard to its workforce.

At the same time, the acquisition workforce, particularly at the Defense Department, experienced a sustained, dramatic, Congressionally-mandated reduction in force. These reductions occurred despite a complete absence of any empirical evidence supporting such a policy. As a result, at a macro level, our current workforce is overwhelmed, under-trained, and retirement eligible. Accordingly, the workforce is ill suited to meet the daunting demands it faces.[3] A number of factors contributed to this dilemma. The promise of the Defense Acquisition Workforce Improvement Act (DAWIA) and the Clinger-Cohen Act remains

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[1] See generally, Steven L. Schooner, *Book Review: Change, Change Leadership, and Acquisition Reform*, 26 PUBLIC CONTRACT LAW JOURNAL 467 (1997).

[2] Experienced acquisition professionals recognize that contractors equate inclusion in these contractual arrangements to the issuance of a "hunting license."

[3] Office of the Inspector General, Department of Defense, *DOD Acquisition Workforce Reduction Trends and Impacts*, Report D-2000-088 (February 29, 2000). This study identified, among others, the following effects of the personnel reductions: (1) increased backlog in closing out completed contracts; (2) insufficient staff to manage requirements; (3) reduced scrutiny and timeliness in reviewing acquisition actions; (4) difficulties retaining personnel; and (5) insufficient contract surveillance.

underfunded and, accordingly, unfulfilled.[4] The pace of recent reforms outpaced whatever investment agencies chose to make in training and professional development. Meanwhile, the unequivocal mandate from the White House and Congress to increase outsourcing of commercial services prompted a dramatically increased workload, both in volume and complexity. These service contracts not only require additional skill and effort at the formation stage, but they require additional effort during the contract performance or administration phase. Today, the federal government's contract administration resources are inadequate. As the acquisition workforce continues to be stretched thinner, oversight of the process suffers. The constant deluge of unfulfilled purchasing requirements mandates that the remaining acquisition workforce must keep buying. Unfortunately, what this means is that fewer resources remain to conduct adequate acquisition planning, monitor existing contracts, or supervise (or review) the procurement professionals responsible for these activities.

The reduction in *internal* oversight might raise fewer concerns but for the corresponding reduction in *external* oversight. Throughout the 1990's and beyond, external oversight of the procurement system has plummeted. By external oversight, I mean non-governmental, third-party monitoring of the system or what some refer to as private attorney general activity. While few would argue that litigation is a public good, the importance of external oversight is elevated by the dramatic reduction in internal oversight. For a host of reasons, the federal government can no longer rely upon the private sector to assist in any meaningful way in ensuring compliance with procurement laws, regulations, and policies.[5]

Much has been made of what some perceive as a difference of opinion between me and Professor Steve Kelman in this regard. I remain convinced, however, that – on this issue – we are of one mind. Oversight of the procurement process is a key ingredient to maintaining public trust in our government. Moreover, during periods of intense change, oversight cannot be ignored and, if anything, must be increased. In his popular book, which later became the roadmap for his agenda at OFPP, Professor Kelman stated:

> I take very seriously the goal of keeping the level of corruption in government low. The costs of government corruption are far greater than the monetary or performance losses to the government that result from corrupt bargains. Public corruption

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[4] Defense Acquisition Workforce Improvement Act (DAWIA), 10 U.S.C. §§ 87, 1701 et seq., and the Clinger-Cohen Act, Pub. L. No. 104-106, § 4307 (February 10, 1996), adding 41 U.S.C. § 433.

[5] Steven L. Schooner, *Fear of Oversight: The Fundamental Failure of Businesslike Government,* 50 AMERICAN UNIVERSITY LAW REVIEW 627 (2001). This article details – and attempts to explain, in the context of the 1990's acquisition reforms – the dramatic reduction in protest activity (or disappointed offeror litigation) and contract disputes activity during the 1990's.

> can devastate the ethical tone of society as a whole and decrease the inclination of citizens to behave ethically in their everyday lives. . . . Thus, even the economist Arthur Okun has written that government "*should* spend $20 to prevent the theft of $1 of public funds."[6]

Professor Kelman later expanded on this thought:

> Any loosening of the procurement regulatory straightjacket should be accompanied by, and linked to, *increased resources* for public corruption investigations to investigate units both outside the line agencies responsible for procurement and within those agencies. . . . *Deregulation of the procurement system should also be accompanied by an increase in criminal penalties for procurement corruption.* . . . A public announcement of increased resources devoted to investigation and of increased penalties would allow elected officials who might otherwise be worried that procurement deregulation signaled a withering of concern over public integrity, to display a visible signal of continuing concern . . . .[7]

In this context, what is most obviously absent from SARA is what I most hoped to find. Unfortunately, SARA offers no solution to the startling absence of oversight in federal

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[6] STEVEN KELMAN, PROCUREMENT AND PUBLIC MANAGEMENT: THE FEAR OF DISCRETION AND THE QUALITY OF GOVERNMENT PERFORMANCE 96 (1990), citing ARTHUR M. OKUN, EQUALITY AND EFFICIENCY: THE BIG TRADEOFF 60 (1975). Okun elaborates on this point:

> Because the government gets its funds from taxpayers by mandatory, not voluntary, decisions, there is no room for the principle of caveat emptor. . . . The government must be accountable to the citizens, and accountability is as costly in resources as it is precious to the integrity of the political process. *Bureaucratic red tape is neither an accident nor a reflection of bad rules . . . : it is the result of the obligation of political decision-makers to be cautious . . . and to guard against any misuse of taxpayers' money.* Public officials follow the Ten Commandments of their profession, which proclaim that thou shalt not be experimental or venturesome or flexible.

Id. (emphasis added).

[7] KELMAN, PROCUREMENT AND PUBLIC MANAGEMENT 98-99 (1990) (emphasis added).

procurement. Thus, my concerns related to our currently inadequate oversight regime lead me to a related topic, the need to restore and revitalize our acquisition workforce.

ACQUISITION WORKFORCE PROPOSALS: TOO LITTLE TOO LATE

Here, too, my hopes for SARA were dashed. To the extent that the bill addresses concerns related to the acquisition workforce, they are primarily cosmetic changes that fail to require investment of admittedly scarce government resources to solve this pressing problem. My reaction to most of these proposals is simple: you will get what you pay for, and these proposals pay for nothing.

There is little point today in re-visiting the Faustian bargains made during the 1990's – bargains that, apparently, traded acquisition workforce cuts in exchange for increased flexibility in the process. Both parties revel in, and claim credit for having contributed to, the reduction in size of the federal government.[8] No one today can claim responsibility, nor can we assign blame, for the fact that the existing acquisition workforce is improperly staffed or insufficiently trained. More (and better) personnel – and the training of both new and existing personnel – requires additional money. This Committee, arguably more so than any other, can make the case that investing in additional acquisition personnel and workforce training is needed to restore meaningful oversight to federal procurement.

In that context, you asked whether the training fund, contained in section 102, would enhance the current state of training for all acquisition personnel. I fear it will not. Worse, I remain concerned that it may actually lead to a reduction in acquisition training. At its core, this is smoke and mirrors akin to mandating educational requirements while ignoring the costs associated with such a mandate. This practice has become commonplace in the acquisition community. As an institution, the government repeatedly has issued broad proclamations supporting training and professional development – such as DAWIA and Clinger-Cohen (referenced above) – while failing to invest in a properly trained workforce.

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[8] The naive quest for a "smaller" government masks the more important policy question of whether a large shadow government (or contractor corps) is preferable to the perceived entrenched and bloated civil service. See, generally, Paul C. Light, *The Public Service* (June 1, 1999) available at <http://www.GovExec.com>. Light suggests that the shadow government, which resides mostly outside the public's consciousness, reflects decades of personnel ceilings, hiring limits, and unrelenting pressure to do more with less. See also, VICE PRESIDENT AL GORE, THE BEST KEPT SECRETS IN GOVERNMENT: A REPORT TO PRESIDENT BILL CLINTON 1, 207 (GPO, 1996) (reflecting that the Executive Branch, excluding the independent Postal Service, has "the smallest workforce in 30 years"); RICHARD STILLMAN II, THE AMERICAN BUREAUCRACY: THE CORE OF MODERN GOVERNMENT 307-309 (2d ed. 1996) (cautioning that the growth of contracting out has "tended to accelerate numerous problems and dilemmas of managerial efficiency, oversight, and accountability.").

While I laud any effort to invest in acquisition training, it is clear that *Congress should fund necessary training programs through the normal budget and appropriations process.* Putting this obvious issue aside, the training fund could prompt any number of unfortunate externalities. For example, if GSA or other agencies (whose contractual vehicles bear this burden) choose to raise prices to cover the shortfall, buying agencies simply may choose to take their business elsewhere rather than foot the bill for an amorphous training fund. Similarly, some government managers – faced with scarce resources – will choose merely to fund their current training plans with these funds, rather than utilizing the fund for *additional* training. Others may interpret the statutory regime to suggest that the *only* acquisition training available would be that which the fund would cover. This would create a worst case scenario – a classic "race to the bottom" – in effect *reducing* the current (albeit meager) investment in procurement training. Nor does it seem likely, in any event, that the fund could generate sufficient revenue to accomplish the needed training.

To the extent that you asked what type of metrics should be established for this (or any) training fund, I suggest consideration of the following:

> (1) Quantity: Did the fund permit federal acquisition professionals to obtain more training than in the preceding year? (That would be a good start and, given the current environment, I think this is an entirely appropriate aspiration. Ultimately, however, we must do much better, and the metric should reflect this.) Does the fund permit appropriate travel to reasonable venues for training and sufficient additional personnel so that participation in training is not routinely cancelled, deferred, or denied due to office exigencies?[9]
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> (2) Quality: Did the fund permit a greater percentage of the workforce to obtain needed skills? One way to measure this would be to determine whether more of the workforce was able to achieve higher DAWIA or Clinger-Cohen qualification standards. Another measure might query whether it permitted additional personnel to obtain professional certifications such as the Certified Professional Contracts Manager (CPCM) or Certified Associate Contracts Manager (CACM)?
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> (3) Diversity: Does the fund afford managers and acquisition personnel the flexibility to craft specific training solutions that include degree-based or non-degree undergraduate and graduate courses of study at community colleges, colleges, and universities; continuing education programs offered by professional training organizations (both not-for-profit and for-profit); government-sponsored training (whether at government teaching facilities such as the Defense Acquisition University or through various delivery methodologies), etc.? Does the fund permit acquisition professionals the time and resources necessary to participate in and, where appropriate, assume leadership positions

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[9] In this context, I am reminded of popular complaint that "the immediate drives out the important."

within, professional government-industry organizations (such as the National Contract Management Association (NCMA)) at the local, regional, and national levels?

You also asked whether I believed that the proposed government-industry acquisition professional exchange program, contained in section 103, will help alleviate the current difficulties in recruiting and retaining a highly-qualified acquisition workforce. While I applaud this initiative and believe it could prove valuable, I do not believe it would generate sufficient return on investment. Nor do I believe that it will, in more than a token fashion, help alleviate the current acquisition workforce difficulties. Based upon my experience in government service, I am skeptical as to the ability and willingness of senior managers to release their most talented personnel for these opportunities, particularly given the current – and projected long-term – inadequacy of the procurement workforce. I am concerned that the administrative burden, if not hassle, associated with such an endeavor may deter many organizations from participating. I also fear that the potential for conflicts of interest – both actual and apparent – is sufficiently great so as to merit further study. Given these hurdles, I would rather see Congress identify and earmark resources needed to hire additional personnel, grade the positions commensurate with experience and education, and invest in additional training.[10]

I offer a similar response your question regarding performance based service contracting, for which a statutory preference is stated in section 401. I firmly support any initiative to broaden the government's use of performance based contracting. As the government annually increases its reliance upon the private sector for its commercial services, performance based service contracting expertise grows in importance.

Having said that, statutory exhortations – like talk – are cheap. If Congress wants to send a clear message on this issue, I suggest that Congress: (1) appropriate a significant sum of money – consistently, for a number of years – to be used to train government personnel in the use of performance based service contracting; (2) draft authorizing legislation mandating a minimum number of hours of annual classroom training (e.g., 40 hours, but in no event less than 24 hours), while specifying that a certain percentage of that training include practical drafting and negotiation exercises; and (3) task an agency or office (such as the Office of Federal Procurement Policy) with establishing an annual government-wide contest (with numerous awards publicly presented in Washington, D.C.) rewarding excellence in at least two categories: (a) drafting performance based statements of work and (b) publishing lessons learned from successful performance based acquisitions.

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[10] For the same reasons, I applaud the intent behind the bill's provision, section 201, that would upgrade agencies' senior procurement executives to chief acquisition officers. I do not object to this provision, but it elevates form over substance. I do not mean to disregard the value of symbolic gestures. Given the current state of the acquisition workforce, however, much more is needed. Unfortunately, provisions such as section 201 and 103 divert focus from the larger issues and squander the opportunity to correct significant problems.

SECTION 221: SUBTLE ADDITION OF A SINGLE ZERO: A HIGH-RISK APPROACH TO DECONSTRUCTING PUBLIC PROCUREMENT

Nowhere is the need for this Committee's scrutiny more acute than in the context of high-volume, lower-dollar purchasing. The micro-purchase threshold and the corresponding proliferation of government purchase cards have revolutionized government purchasing. Yet, with few exceptions (primarily in the General Accounting Office and agency inspectors general), the government has adopted an ostrich-like approach to oversight concerns while trumpeting the efficiencies associated with purchase card use.[11] Even as disclosure of purchase card abuse has become more widespread,[12] few are willing to attempt to rein in purchase card use. Indeed, section 221 of SARA quietly proposes to multiply the threshold ten-fold, from $2,500 to $25,000. The bill would increase the purchase card authority without imposing any additional controls or any acknowledgment of the risks associated with such an endeavor. Should SARA become law in its current form, its greatest impact likely would be felt as a result of its subtle addition of a single zero.

During Fiscal Year 2000, government employees, wielding more than 670,000 purchase cards, completed more than 23 million transactions, worth over $12 billion.[13] Those 23 million purchase card transactions – not surprisingly – comprise the lion's share of the 33 million total transactions captured by the Federal Procurement Data System (FPDS).[14] Unfortunately, the FPDS neither collects nor reports information relating to the nature of these purchases.

As dramatic as these numbers appear, it is helpful to examine what impact the increase would have on insight into what, how, and from whom the government buys. Excluding purchase card transactions, the FPDS currently suggests that approximately 95% of the reported

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[11] Steven L. Schooner & Neil S. Whiteman, *Purchase Cards and Micro-Purchases: Sacrificing Traditional United States Procurement Policies At the Altar of Efficiency*, 9 PUBLIC PROCUREMENT LAW REVIEW 148 (2000); Neil S. Whiteman, *Charging Ahead: Has the Government Purchase Card Exceeded Its Limit?*, 30 PUBLIC CONTRACT LAW JOURNAL 403 (2000).

[12] See, generally, General Accounting Office, *Purchase Cards: Control Weaknesses Leave Two Navy Units Vulnerable to Fraud and Abuse*, GAO-01-995T July 30, 2001; and the subsequent report, GAO-02-32, November 30, 2001, which contains a host of organization-specific recommendations.

[13] See the Federal Procurement Data System's Federal Procurement Report at <http://www.fpdc.gov/fpdc/fpr.htm>.

[14] For Fiscal Year 2000, the FPDS captured 9,847,967 transactions, plus 23,457,456 purchase card transactions, for a total of 33,305,423 transactions.

purchases are for $25,000 or less.[15] If the purchase card authority were expanded to $25,000, it could encompass approximately 98.5 percent of all government purchases.[16] Put another way, if this authority became law, the FPDS might, in the future, give insight into as few as 520,000 transactions out of a total of more than 33 million transaction each year.

For this huge number of transactions, law, policy, and practice permit purchase card users to ignore the Government's normal procurement rules and procedures. The current regime basically requires *nothing* of the government employees who buy using a government purchase card. Their average training in procurement is less than four hours (and, to be clear, that is four hours of classroom time, not semester hours). To the extent that regulations may require efforts to rotate purchases among vendors or encourage the use of small businesses, this guidance is routinely ignored. I do not doubt the efficiency of the purchase card *when used appropriately.* Yet, given the proliferation of card holders, the insufficient investment in training, and the current absence of meaningful oversight into purchase card use, it is irrational to conclude that purchase card use is under control. In summarizing 382 reports addressing various aspects of the Defense Department's purchase cards program, the DoD Inspector General "identified problems related to the integrity of some cardholders [and] internal control weaknesses or noncompliance[.]" Ultimately, the DoD IG concluded:

> Because of its dollar magnitude and the number of cardholders, the purchase card program is an *area requiring continuing management, emphasis, oversight, and improvement by DoD. Continued audit coverage is needed* of the purchase card program to maintain its credibility with Congress and the American Public as a cost efficient method of procurement.[17]

Accordingly, it simply is irresponsible to suggest a ten-fold increase in the micro-purchase threshold.

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[15] Of the total 9,847,967 transactions covered by the report, 9,328,187 were reported on the Standard Form 281, used for purchases of $25,000 or less.

[16] To be clear, however, purchases above $25,000 – though few in number – would still account for the lion's share (more than 85 percent) of the dollars spent.

[17] Summary Report of the DoD Inspector General, *DoD Purchase Card Audit Coverage*, D-2002-029 (December 27, 2001) (emphasis added). I strongly encourage perusal of the report, which, among other things, notes that: (1) "[i]n 222 reports, the auditors reported cardholders made unauthorized purchases"; (2) management oversight was discussed in 115 reports; (3) "[i]n 79 reports, auditors reported inadequate controls over accountable property purchased using the credit cards"; and (4) "[p]roblems with . . . account reconciliation and certification reviews were discussed in 88 reports."

Also, it is axiomatic that such a change would also further reduce small business participation in the federal procurement process.[18] Increased purchase card usage already has shrunk the size of the pie from which the government attempts to allocate a fair share (currently defined as 23 percent) to small businesses. Anecdotal evidence (uncontroverted by any empirical evidence) suggests that large retailers such as Office Depot, Best Buy, Staples, and Home Depot capture most of the purchase card opportunities. Few doubt that small businesses today obtain less of government's purchases due to purchase card use. The federal government's disenfranchisement of small businesses would no doubt accelerate with a ten-fold increase in the purchase card threshold.

For these reasons, I oppose any increase in the purchase card threshold, and I strongly counsel against a ten-fold increase.[19] If this provision is not removed from the bill, at a minimum, I suggest that any legislation broadening the use of purchase cards should: (1) mandate (and fund) additional training; (2) mandate (and fund) internal controls; (3) mandate (and fund) appropriate audit resources; and (4) require collection of meaningful information detailing what these purchases entail.[20]

Moreover, you asked whether certain provisions in SARA might enhance the federal government's ability to leverage its buying power in the commercial marketplace. I do not. This bill, however, *could* make a valuable contribution specifically by either requiring a study of, or mandating an investment in, the leveraging of the government's purchase card power. The government should routinely concatenate meaningful data on its purchase card transactions. The government should collect, sort, and use this information to demand favorable price treatment. For example, the government (most likely through the General Services Administration) should determine the dollar volume of its transactions with large retail vendors (such as Office Depot, Staples, Best Buy, or Home Depot, etc.) with whom it did substantial business in the preceding year. The government should then negotiate (if not demand) volume discounts for future purchases. For example, this could take the form of automatic point-of-sale discounts whenever and wherever the purchase card is used. The analogy to the government travel card – particularly with regard to government-wide automobile rental and hotel discounts – should pave the way for

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[18] The same would be true of small disadvantaged businesses, women-owned businesses, etc. This legislation, in effect, would exempt 98.5 percent of the government's purchases from all Congressionally mandated social and economic policies, including domestic preferences, etc. Were Congress to make a conscious, deliberate decision that the procurement system was an inappropriate vehicle for the pursuit of social policy, I would not object. Conversely, it seems almost underhanded, if not devious, to subvert the existing regime in this manner.

[19] I believe that a rational case could be made for an inflation adjustment to the current $2,500 threshold. Anything more, however, troubles me.

[20] For an exhaustive list of potential purchase card program controls suggested by the General Accounting Office, see the report referenced in note 12, *supra*.

such practice.

CONCERNS REGARDING EXPANDED COMMERCIAL AUTHORITIES

In my effort to focus my testimony upon what I perceived as the most important issues in SARA, I have avoided an extensive discussion of the matters related to commercial acquisition.[21] Nonetheless, I urge caution here. I have grave concerns with section 402's authority permitting the use of time and material or labor-hour contract types under FAR Part 12. Use of these vehicles seems antithetical to the clear policy, expressed elsewhere in the bill, that favors performance based service contracting (PBSC). In addition, ultimately, this authority would facilitate the government's use of what are, in effect, cost-plus-percentage-of-cost arrangements. As this Committee well knows, use of these types of vehicles is prohibited.[22] Similarly, I question the value of section 404's designation of commercial business entities. Proposals of this type merely invite corporate organizational gamesmanship, which should have no place in the public procurement regime. Finally, I am unaware that a compelling case has been made for the changes suggested in section 403. I believe that the current definition of commercial items is sufficiently broad to accommodate reasonable and appropriate uses of the commercial purchasing authority. As a whole, I believe that these initiatives are premature. They require further study and, in their current form, pose undue risk to the procurement system.

Conclusion

Mr. Chairman, that concludes my testimony. Thank you again for the opportunity to share this information and these thoughts with you. I would be pleased to answer any questions you may have.

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[21] To the extent my general opinions on the larger topic may be of assistance, see Steven L. Schooner, *Commercial Purchasing: The Chasm Between the United States Government's Evolving Policy and Practice* (this book chapter, forthcoming in 2002, is available in draft form at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=285536>).

[22] 48 C.F.R. § 16.102(c); 10 U.S.C. § 2306(a); 41 U.S.C. § 254(b).